

Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

DIVISION

ARLENE JOSEPH,

Plaintiff,

VS.

LINEHAUL LOGISTICS, INC.,

Defendant.

Civil Action No.

DEFENDANT LINEHAUL LOGISTICS, INC.'S NOTICE OF REMOVAL

COMES NOW Defendant LineHaul Logistics, Inc. (hereafter “Defendant”), by and through counsel, and pursuant to 28 U.S.C. §§ 1331, 1441(b), and 1446, hereby removes the above action from the Fourth Judicial District Court, Missoula County, State of Montana, based on the following grounds:

1. On or about July 26, 2011, Plaintiff Arlene Joseph ("Plaintiff")

1 filed an Amended Complaint against Defendant in the Fourth Judicial District
2 Court, Missoula County, State of Montana, Civil Action No. DV-11-578
3 ("Amended Complaint"). See Ex. B. The Amended Complaint includes
4 claims for wrongful discharge (lack of good cause and retaliation), state and
5 federal violations of wage and hour laws, and failure to provide health
6 insurance benefits pursuant to the Employee Retirement Income Security
7 Act ("ERISA").
8

9 2. Plaintiff filed but did not serve Defendant with the Complaint on
10 May 2, 2011. See Ex. A. At some point thereafter, Plaintiff forwarded
11 Defendant's attorney the Amended Complaint. Plaintiff's attorney
12 acknowledged service on August 5, 2011. See Ex. C.
13

14 3. Plaintiff's Amended Complaint includes two (2) federal claims—
15 a wage and hour claim under the Fair Labor Standards Act ("FLSA") and a
16 claim for failing to provide insurance benefits under ERISA. Both of these
17 claims involve federal questions for which this Court has original jurisdiction.
18 28 U.S.C. § 1331.
19

20 4. As a matter of law, Defendant may remove this action to this
21 Court pursuant to 28 U.S.C. § 1331; See also 28 U.S.C. § 1441(b).
22

23 5. This notice is timely in that it has been filed within thirty (30) days
24 of the date in which Defendant first received a copy of Plaintiff's Amended

1 Complaint. Pursuant to 28 U.S.C. § 1446(a), the following documents
2 constitute all of the pleadings, motions, and other papers which have been
3 filed in the state court action, and copies are attached hereto as follows:

- 4 a. Complaint (Exhibit A);
- 5 b. Amended Complaint (Exhibit B);
- 6 c. Summons/Notice of Acknowledgment of Receipt of
- 7 Summons and Amended Complaint (Exhibit C); and
- 8 d. Answer (Exhibit D).

9
10 6. Defendant states that no motions are currently pending, and no
11 hearings have been set in the state court as of this date.

12
13 7. Pursuant to 28 U.S.C. 1446(d) and L.R. 3.2, copies of this Notice
14 of Removal have been filed with the Fourth Judicial District Court, Missoula
15 County, State of Montana, and provided to Plaintiff's counsel.

16
17 8. Defendant is entitled to remove the above action from the state
18 District Court to the United States District Court pursuant to 28 U.S.C. §§
19 1331, 1441(b).

20 DATED this 25th day of August, 2011.

21 REEP, BELL & LAIRD, P.C.

22
23 /s/ Cory R. Laird

24 Cory R. Laird

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that, on 8/25/11, a copy of the foregoing document
was served on the following persons by the following means:

<u>1</u>	CM/ECF
<u>2</u>	Hand Delivery
<u>3</u>	Mail
_____	Overnight Delivery Service
_____	Fax
_____	E-Mail

1. Clerk, U.S. District Court

2. Clerk, District Court

3. Stacey Weldele-Wade
ANTONIOLI AND WADE, P.C.
P.O. Box 6018
Missoula, Montana 59806-6018

/s/ Cory R. Laird
Cory R. Laird
Attorneys for Defendant